

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

THERESA CAVER,

Plaintiff,

v.

BAC HOME LOANS SERVICING L.P.,

Defendant.

Case No. 09-14531

DISTRICT JUDGE
ARTHUR J. TARNOW

MAGISTRATE JUDGE
MONA K. MAJZOUN

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS [4]
and
DISMISSING THE CASE

Before the Court is Defendant's Motion to Dismiss [4]. Plaintiff has filed a Response [5], and Defendant has filed a Reply [6]. The Court finds that the facts and legal arguments are adequately presented in the parties' pleadings and briefs, and that the decision process would not be significantly aided by oral argument. Therefore, pursuant to Eastern District of Michigan Local Rule 7.1(f)(2), this motion will be decided on the briefs and without oral argument.

The state-court Complaint, removed [1] to this Court on November 19, 2009, specifies five causes of action. Plaintiff seeks: (1) equitable relief under contract law; (2) an accounting; (3) a remedy for Defendant's alleged breach of the terms of a mortgage; (4) relief for Defendant's alleged violation of the Fair Debt Collection Practices Act ("FDCPA"); and, (5) relief for Defendant's alleged violations of the Michigan Consumer Protection Act ("MCPA"). In her Response [5], Plaintiff withdraws Count Five of the Complaint.

In Defendant's Motion to Dismiss [4] and Reply [6], Defendants argue that Plaintiff's claims fail as a matter of law because, respectively: (1) Defendant was not the contracting party, and further, Plaintiff is not entitled to reformation of the mortgage because she failed to aver fraud or mutual mistake; (2) Plaintiff has failed to plead the elements of an accounting, and has identified no other duty on Defendant's part to provide one; (3) Defendant was not the contracting party, and

Plaintiff has further failed to dispute that the mortgage authorized the lender to hold her funds in escrow; and, (4) Plaintiff has failed to plead the applicability of the FDCPA, and even if the FDCPA is applicable, Plaintiff has failed to allege that Defendant committed an act in violation of the statute.

Plaintiff has filed a Response [5], but fails to address the meritorious legal arguments raised in Defendants' Motion to Dismiss [4].

The Court has fully reviewed the pleadings and the record in this case. For the reasons stated in Defendants' Motion [4], and the Court being fully advised in the premises,

IT IS HEREBY ORDERED that Defendants' Motion to Dismiss [4] is **GRANTED**. The action is hereby **DISMISSED WITH PREJUDICE** and in its entirety.

SO ORDERED.

S/ARTHUR J. TARNOW
Arthur J. Tarnow
United States District Judge

Dated: April 13, 2010

I hereby certify that a copy of the foregoing document was served upon counsel of record and

Theresa Caver
25221 Pembroke
Detroit, MI 48219

on April 13, 2010, by electronic and/or ordinary mail.

S/LISA M. WARE
Case Manager